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SINGLE BENCH

C.8.1001

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 5408/2005

PETITIONER

P.R. No. 4671/05
Presented by Shri SK Tiwar
dated 9/9/05

✓ Ajay Kumar Patnayak S/o Shri Alekh Prasad Patnayak, aged about 28 years, R/o village Mahloi, Tah. Gharghoda,, District Raigarh [C.G]

VERSUS

RESPONDENTS

✓ :- 1] Jai Prakash Mishra S/o Shri Badri Prasad Mishra, R/o village Mahloi, Tah. Gharghoda, District Raigarh [C.G]

✓ 2] Sarpanch Gram Panchayat, Mahloi, Block Tamnar, Tahsil Gharghoda, District Raigarh [C.G.].

✓ 3] Block Education Officer, Tamnar Tahsil Gharghoda, District Raigarh [CG]

✓ 4] Chief Executive Officer, Janpad Panchayat, Tamnar, Tahsil Gharghorda, District Raigarh [CG.].

✓ 5] Additional Collector, Raigarh, Tahsil and District Raigarh [C.G.]

✓ 6] Director, Panchayat Chhattisgarh, Raipur [C.G.].



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WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 5408 of 2005

Petitioner

Ajay Kumar Patnayak

Versus

Respondents

Jai Prakash Mishra and others

Post for order on 14th March, 2007

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 5408 of 2005

Petitioner

Ajay Kumar Patnayak

Versus

Respondents

Jai Prakash Mishra and others

Single Bench: Hon'ble Mr. Justice Satish K. Agnihotri.

Present: Shri S.K. Tiwari, counsel for the petitioner.
Shri Indrasen Sahu, counsel for the respondent No. 1.
Shri Satish Gupta, Deputy Government Advocate for the
State/respondent No. 3, 5 and 6.

ORDER

(Passed on /4th Day of March, 2007)

The following order of the Court was passed by Satish K. Agnihotri, J.

1. This writ petition, filed under Article 226/227 of the Constitution of India, challenges the legality and validity of the impugned order dated 9-8-2005 (Annexure P/1) passed by the Director, Panchayat Chhattisgarh, Raipur in appeal case No. 410/A-89 (15)/2003-04 along with revision case No. 445/A-89(15)/2003-04, whereunder order dated 2.7.2001 passed by the Additional Collector, Raigarh was upheld. The petitioner further challenges the order dated 2.7.2001 passed by the Additional Collector, Raigarh in appeal case No. 5/A-89/2000-2001, whereunder the appointment of the petitioner was found contrary to the Education Guarantee Scheme (E.G.S.), as in the panel list sent by the Gram Panchayat, Mahloi, name of the respondent No. 1

was at serial No. 1 and the name of the petitioner did not find the place in the said list.

2. The indisputable facts, in nutshell, are that the applications were invited by public announcement system (Munadi) for appointment on the post of Gurujee (Teacher) in two proposed schools at the Gram Panchayat, Mahloi and the Gram Panchayat, Gare. Under Education Guarantee Scheme (E.G.S.) with the consent of village community name of the respondent 1 and others were proposed. The said proposal was approved by Gram Panchayat/Gram Sabha Mahloi and was sent to the Chief Executive Officer, Janpad Panchayat, Tamnar vide letter dated 11.10.1999 (Annexure P-17), name of the respondent No. 1 was at serial No. 1. The Chief Executive Officer did not approve the said list and sent a letter dated 11.1.2000 to the Chairman, Administrative Committee, Gram Panchayat, Mahloi for sending a panel list for appointment of Gurujee at Patarapara (Mahloi) within three days.
3. The Chairman, Administrative Committee vide letter dated 11.1.2000 (Annexure P-19) replied that the panel list of candidates had already been sent vide letter dated 11.10.1999 and no amendment is required in the said list. The said list was sent on the basis of the application received from the candidates pursuant to the public announcement. The Janpad Panchayat again wrote a letter to Gram Panchayat on 17.4.2000 for inviting the applications

and sending a fresh panel list for appointment on the post of Gurujee. In view of second announcement for inviting applications from the candidates, name of the petitioner was approved by Gram Panchayat in its meeting dated 17.7.2000. The name of the petitioner was sent for appointment on the post of Gurujee in village Patarapara (Mahloi) to the Chief Executive Officer, Janpad Panchayat, Tamnar. The Chief Executive Officer accordingly appointed the petitioner as Guruji at Education Guarantee Scheme (E.G.S.) Patarapara, village Panchayat Mahloi superceding earlier proposal sent by Janpad Panchayat.

4. The respondent No. 1, being aggrieved, filed an appeal before the Additional Collector, Raigarh. The Additional Collector, Raigarh after having examined all the facts, came to the conclusion that appointment of the petitioner on the basis of second proposal without considering the rejection of the first proposal, sent by the Gram Panchayat, by the Chief Executive Officer, Janpad Panchayat, Tamnar was perverse. Thus, the appointment of the petitioner was quashed and the Chief Executive Officer, Janpad Panchayat, Tamnar was directed to take appropriate action in accordance with Education Guarantee Scheme (E.G.S.).
5. Being aggrieved, the petitioner has filed an appeal as well as review before the Director, Panchayat Chhattisgarh, Raipur. The



Director, Panchayat affirmed the findings and the order passed by the Additional Collector, Raigarh and dismissed the appeal.

6. The petitioner has filed this petition impugning the orders dated 9.8.2005 (Annexure P-1) and 2.7.2001 (Annexure P-2) on the ground that authority below have not appreciated the case correctly. The Additional Collector has no jurisdiction to entertain the appeal. Thus, the order passed by authority below is bad in law.
7. I have heard Mr. S.K. Tiwari, learned counsel for the petitioner, Mr. Indrasen Sahu, learned counsel for the respondent No. 1 and Mr. Satish Gupta, Deputy Government Advocate for the respondent No. 3, 5 and 6.
8. On perusal of the papers, I have found that the below Court have examined the facts correctly on the basis of records available. There is no mis-appreciation of evidence as produced before them. There is no perversity noticed in the order passed by the authority below and the order is just and proper. In view of the foregoing, no interference is warranted.
9. It is well settled principles of law that a writ of certiorari under Article 226 or direction under Article 227 of the Constitution of India is issued for correcting gross errors of jurisdiction, i.e., when a Subordinate Court/Tribunal is found to have acted

(i) without jurisdiction by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction-by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

10. As a result and foregoing reasons, this petition stands dismissed.

No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Subhash